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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ZHOUHU SHEN,

Plaintiff,

v.

MICHAEL MUKASEY, United States Attorney  
General;  
MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
EMILIO T. GONZALEZ, Director of United  
States Citizenship and Immigration Services;  
ROBERT S. MUELLER,  
Director of Federal Bureau of Investigation;  
Defendants.

No. C 08-1614 JSW

**ANSWER**

Defendants hereby submit their answer to Plaintiff's Original Complaint for Writ in the Nature of Mandamus and Declaratory Judgment Under 28 U.S.C. § 1361.

1. Paragraph One consists of Plaintiff's characterizations of the lawsuit for which no answer is required; however, to the extent that such allegations are deemed to require an answer, Defendants deny the allegations in Paragraph One.

**PARTIES**

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the first and third allegations in Paragraph Three, and deny the second

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1 sentence in Paragraph Three.

2 4. Defendants admit the allegations in Paragraph Four.

3 5. Defendants admit the allegations in Paragraph Five.

4 6. Defendants admit the allegations in Paragraph Six.

5 **JURISDICTION**

6 7. Paragraph Seven consists of Plaintiff's allegation regarding jurisdiction, to which no  
7 responsive pleading is required; however, to the extent that such allegations are deemed to require  
8 an answer, Defendants deny the allegations contained in this paragraph.

9 **VENUE**

10 8. Defendants deny the allegations in Paragraph Eight.

11 **INTRADISTRICT ASSIGNMENT**

12 9. Paragraph Nine consists of Plaintiff's allegation regarding intradistrict assignment, to which  
13 no responsive pleading is required; however, to the extent that such allegations are deemed to  
14 require an answer, Defendants deny the allegations contained in this paragraph.

15 **EXHAUSTION OF REMEDIES**

16 10. Defendants deny the allegations in Paragraph Ten.

17 **CAUSE OF ACTION**

18 11. Defendants admit the allegations in Paragraph Eleven.

19 12. Defendants admit the allegations in Paragraph Twelve.

20 13. Defendants are without sufficient information to admit or deny the allegations in  
21 Paragraph Thirteen, and on that basis, deny them.

22 14. Defendants admit the allegations in Paragraph Fourteen.

23 15. Defendants admit the continued pendency of the plaintiff's N-400 application. The FBI  
24 background name check on the Plaintiff, however, is still pending with the Federal Bureau of  
25 Investigation. During the pendency of the name check, USCIS is statutorily precluded from  
26 adjudicating the plaintiff's application and prohibited by published regulation from scheduling the  
27 Plaintiff's case for an interview.

28 16. Defendants deny the allegations in Paragraph Sixteen.

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17. Defendants deny the allegations in Paragraph Seventeen.

18. Defendants admit that Plaintiff's N-400 application has been pending since May 1, 2006.

19. Defendants are without sufficient information to admit or deny the allegations in Paragraph Nineteen, and on that basis, deny them.

20. Defendants deny the allegations in Paragraph Twenty.

21. Defendants deny the allegations in Paragraph Twenty-One.

22. Defendants deny the allegations in Paragraph-Two.

#### **PRAYER**

The remaining allegations consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

#### **AFFIRMATIVE AND/OR OTHER DEFENSES**

All allegations not here before specifically admitted, denied, or modified, are hereby denied. For further and separate answer, Defendants allege as follows:

##### **FIRST AFFIRMATIVE DEFENSE**

The court lacks jurisdiction over the subject matter of this action.

##### **SECOND AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

##### **THIRD AFFIRMATIVE DEFENSE**

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

##### **FOURTH AFFIRMATIVE DEFENSE**

At all times alleged in the Complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

##### **FIFTH AFFIRMATIVE DEFENSE**

Defendants are processing the applications referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

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**SIXTH AFFIRMATIVE DEFENSE**

Defendants' delay is not unreasonable as a matter of law.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: June 2, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

/s/  
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ILA C. DEISS  
Assistant United States Attorney  
Attorneys for Defendants